IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 91 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITTHALBHAI M GOHIL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 27/07/2007

ORAL JUDGMENT

1. The petitioner has challenged the order dated 25.11.97 passed by the District Health Officer, District Panchayat, Amreli revoking the order dated 21.03.92

giving the petitioner pay scale of Rs. 1400-2300 with effect from 01.06.87 which was the scale prescribed for the post of statistical assistant.

2. The facts in brief deserve to be set out as under:

2.1 The petitioner was appointed as Computer on 22.05.72. The computers were initially a separate cadre, however, in the year 1977 this cadre was merged with the clerical cadre vide notification dated 13.05.77 and both these cadres were considered for further promotion to the Higher Post of Senior Clerk.

2.1 It is mentioned by the petitioner in the petition that vide circular dated 16.01.97, the State Government directed the Computers to pas the pre- service examination failing which their increments were ordered to be stopped. The petitioner was infact granted grade scale from 01.06.87 vide order dated 21.03.92. The scale granted to the petitioner was to the post of Assistant in the scale of Rs. 1400-2300. The District Health Officer vide order dated 25.11.97 revoked the orders of higher pay scaled granted to the petitioner and ordered fixation of his pay in the pay scale of Rs. 950-1500. This order is impugned in this petition.

3. Mr I.S Supehia, learned advocate appearing for the petitioner has submitted that the recovery has been stayed by this Court. He submits that when the higher pay scale is granted to an employee and it is granted on account of mistake on the part of the authorities then the payment received thereunder is not permitted to be recovered by the authorities. He submits that this petition may therefore be confined only to the challenge

to the recovery of the pay scale.

3.1 Mr Supehia submits that the petitioner had been appointed as a Computer and he infact retired as computer only in the year 2005 i.e on 31.10.05. From any angle the petitioner could not have been denied the benefit of higher grade scale as per the then existing scheme of according higher pay scale to the employees who were not promoted despite they being eligible to promotion for higher post under the scheme of 9, 18 and 27 years.

3.2 Mr Supehia further submits that this benefit was also made available to the posts which did not have any promotional avenues and were treated to be isolated posts as per the schedule annexed to the scheme. The petitioner was infact entitled to higher pay scale which was not given to him.

3.3 Mr Supehia submits that he does not press this petition in respect of other prayers as the petitioner is desirous to make representation to the appropriate authorities including the State for considering his case for higher pay scale on the basis of the provisions of the scheme prevalent at the relevant time and this petition may therefore be confined as said above to the challenge of recovery of the amount which the petitioner received under the higher pay scale which was withdrawn vide order dated 25.11.97.

4. Accordingly, the other prayers in the petition are not dealt with as they are not pressed at this stage. In respect of the prayers against the recovery, Mr Supehia has relied upon the decision of this Court (Coram : Jayant Patel, J.) in SCA 6006 to 6008 of 2002 decided on

28.01.03 wherein this Court has not permitted any recovery of the amount paid under mistake to the employee as no fraud or misrepresentation was played on the part of the employee for receiving the same.

4.1 The said decision was upheld by the Division Bench of this Court in LPA No. 750/03 vide the Division Bench order dated 16.12.04 against which the SLP filed being Special Leave to Appeal (Civil) No. 6775-6777 of 2005 was dismissed.

5. Mr Supehia has also relied on the decision of the Apex Court in the case of Col. B.J Akkara (Retd.) vs. Govt of India & Ors reported in (2007) 1 SCC (L & S) 529 wherein the Apex court did not permit the recovery of the payment by the authorities under mistake to the employee when no fraud or misrepresentation is played.

6. Mr Munshaw, learned advocate appearing for the respondent could not resist effectively this petition. He could not point out that the higher pay scale was granted to the petitioner on account of any misrepresentation or fraud.

7. This Court has heard learned advocates for the parties at length. As it is submitted by Mr Supehia this petition is now confined only to the prayer against the recovery which was sought to be made pursuant to the order dated 25.11.97. It deserves to be noted that the petitioner had been granted the pay scale for the post of Statistical Assistant at Rs. 1400-2300 vide order dated 21.03.92 with effect from 01.06.87. This was withdrawn vide order dated 25.11.97 and that order is not containing any allegation or statement that the scale was

granted to the petitioner due to any misrepresentation on his part and/or any fraudulent practice adopted by him in receiving the pay scale.

8. This Court(Coram: M.S. Shah, J.) vide order dated 08.01.98 passed the following order:

> "Notice returnable on 17.1.1998. Till then there shall be ad-interim stay against recovery, if any. It will be open to the petitioner to pray for ad-interim/interim stay of the impugned order on the returnable date. Direct service is permitted."

9. Thus the recovery was stayed till 17.01.98. Thereafter, the stay was continued time and again. On 12.02.99, the matter was admitted by this Court (Coram : R.M. Doshit, J.) and the following order was passed:

> "Rule. Ad-interim relief is confirmed."

10. Thus, the ad-interim relief was confirmed. It is observed from the record that the petitioner had to file Civil Application No. 6160/04 in the present Special Civil Application No. 91/98 as vide order dated 19.07.04, the respondent authorities had attempted to collect recovery pursuant to the order dated 25.11.97. This application was disposed of by fixing the main matter for final disposal. It deserves to be noted at this stage that the order dated 12.02.99 confirming the interim relief had not been vacated as stated at the bar by Mr. Supehia, learned advocate for the petitioner. In view of this the petition deserves to be disposed of by issuing appropriate directions to the authorities.

11. Mr Supehia's submission with regard to the quashing of the action/order of recovery deserves to be accepted in view of the fact that the impugned order dated 25.11.97 revoking the grant of higher pay scale does not refer to any fraudulent practice and/or any misrepresentation on the part of the present petitioner. However, it may be noted that vide order dated 21.01.06, the Deputy District Development Officer issued a charge-sheet against the petitioner wherein it was also charged that he had obtained the pay scale of Statistical Assistant contrary to the rules. It may be noted that the same charge-sheet is dropped vide order dated 10.08.06 by the Deputy District Development Officer. It also deserves to be considered that this dropping is not merely on technical ground but it is also on merits after considering the submissions and evidence adduced by the petitioner as it is clearly mentioned in the order dated 10.08.06 which is produced alongwith the further affidavit in Surrejoinder on behalf of respondent no.2.

12. Against this backdrop it clearly appears that the higher pay scale which came to be accorded to the petitioner was certainly not on account of any fraudulent practice and/or misrepresentation on the part of the present petitioner and therefore if it was accorded on same basis by the authorities which came to the conclusion later on that the petitioner was not entitled to such pay scale withdrew the same. The decisions cited at the bar in case of Col. B.J Akkara(Retd.)(supra) and of this Court (Coram : Jayant Patel, J.) in SCA 6006 to 6008 of 2002 decided on 28.01.03 are clearly covering the facts of this case also and therefore the action of recovery and the order of recovery dated 19.07.04 is required to be quashed and set aside.

13. Accordingly, the action of recovery and the order of recovery dated 19.07.04 is required to be quashed and set aside. It is made clear that the petitioner's entitlement to receive the higher pay scale has not been dealt with in this petition as the challenge to the order dated 25.11.97 is not pressed at this stage. Therefore, this petition is disposed of with the aforesaid direction. However, it is open to the petitioner to submit his grievances in respect of not receiving the higher pay scale throughout his career to the respondent authorities. If such a representation is made by the petitioner it is expected that the authorities shall dispose of the same preferably within a period of two months from the date of receipt of the representation keeping in mind that the petitioner has already retired from the services. With the aforesaid direction, this petition stands disposed of. Rule is made absolute to the aforesaid extent. Interim relief if any stands vacated.

(S.R.BRAHMBHATT, J.)

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